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REPORT

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Malpractice Trial.

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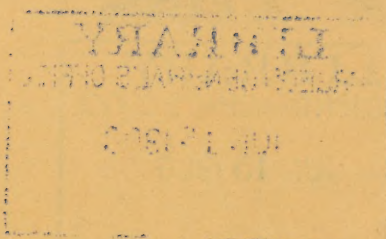
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W. C. DREW VS. G. B. BULLARD AND JOHN H. PECK.

JUNE TERM OF CALEDONIA COUNTY COURT, 1871.

ST. JOHNSBURY :

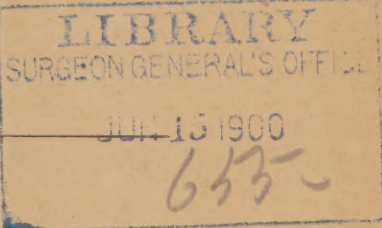
L. W. ROWELL'S JOB PRINTING ESTABLISHMENT.
1871.



REPORT

—OF—

VALPRACTICE TRIAL.



W. C. DREW vs. G. B. BULLARD and JOHN
H. PECK, *defendants.*

JUNE TERM OF CALEDONIA COUNTY COURT, 1871.

ST. JOHNSBURY :
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PREFACE BY DR. BULLARD.

Fortunate, indeed, is the surgical practitioner who has never been elected defendant in a malpractice suit, and scarcely less fortunate is he, who, charged with a want of skill—or what is worse still, with not using what little he may have—is summarily arraigned in court, yet successfully runs the gauntlet of the law and escapes unharmed.

This last has been my experience, and from it I have learned much that may be of service to other of my brethren of the profession. I have learned among other things, that no man need fear the courts who has a just cause and has it fairly presented; and while I would here make acknowledgements to the court for their patience and impartiality during the trial detailed in these pages, and to the jury for their prompt and intelligent verdict, I would not forget the fidelity and ability displayed by the counsel who conducted my defence.

Hereafter I shall consider “honors easy” between the medical and legal professions. If lawyers sometimes look to physic and surgery for relief, so I have found that our profession sometimes look to the learning and eloquence of the bar for protection.

We have published this trial for two reasons:—First to show our brethren of the profession how easily personal ill-will or professional rivalry may, perchance, beget for them a like suit; and second, to show how utterly groundless such a suit may be, and yet how much trouble and expense it may give one.

So far as I am aware this is the first case tried in this or any other country where the first and principal point of the prosecution was, to hold the counseling physician responsible for even making an examination himself; and in this case when so requested to do by the attending physician and patient—afterward plaintiff—thereby utterly ignoring the old medical and surgical adage, “see with your *own* eyes, hear with your *own* ears, feel with your *own* fingers and judge with your *own* judgment.”

So far, also, as I am aware, this is the second case ever tried in this country attempting to hold the counseling physician or surgeon; the first being *Slack vs. Crosby* in Windsor County in this state, in 1854, which resulted in the prompt acquittal of Crosby after two desperate trials.

I would also express my thanks to those medical gentlemen who, from different parts of this state and from New Hampshire and Canada, came to my aid as experts and did so much toward informing the court not only as to the great difficulties in *successfully* treating, but also as to the propriety of our treatment of this rare luxation.

I should feel not to have done my associate—for a short time deft.—Dr. J. H. Peck, justice, did I not express to him my thanks for the firmness with which he stood to the truth and justice in the case after so many times being flattered, cajoled and threatened, and finally after spurning an indirect attempt at bribery, as an insult; and this the more, as the parties behind this plff. had publicly threatened and foretold my ruin in this case.

The testimony, rulings of the court and charge to the jury, have been copied from the minutes of the reporter, the court and counsel, and though in some respects not so full as I could wish, yet, so far as they go, may be relied upon.

We do not give those arguments for the reason that they are not preserved; and if preserved, their great length—(they occupied over seven hours in their delivery)—would forbid. Besides, as remarked by our counsel, our vindication is not as much in what they said, as in the facts disclosed by the testimony.

It is of unbounded satisfaction that the *entire* panel of jurors were at first and at once agreed in my acquittal.

The case was ably managed and argued for the plff. by the Hon. Thomas Bartlett of Lyndon and Oliver T. Brown of East St. Johnsbury, and for the defts. by Gen. Wm. W. Grout of Barton and Hon. H. H. Powers of Morrisville.

G. B. BULLARD.

St. Johnsbury, July 4th, 1871.

A WORD FROM DR. PECK.

Knowing that to a certain extent the medical profession are mutually interested in cases of malpractice, and believing the peculiar connection of the defendants to the case which we here report is somewhat novel, we call the attention of professional lovers of justice to it. Although my own connection with the trial was brief, yet my anxiety for the result was unchanged.

We present this report, not to boast of superior medical or surgical skill—though it was said by one of the jurymen who tried the case, that the jury found the treatment not only *ordinary* but in the highest degree skillful. They evidently believe in the yoke splint as a suitable dressing for an injury of the clavicle; but whether our friend, Dr. Worthington from over the border, has come to believe in it also, we are not so certain. His intimate acquaintance, however, with American surgical writers and with the human system, especially the *Pectoralis Major* and *Latissimus*, *Dorsal* muscles ought, and will we think, somewhat modify his notions concerning this “barbarous appliance;” and we also venture to hope that the Dr. is, at least, no less qualified for the honorable and responsible duties as “*examiner*” at home for anything that happened while in the hands of the *cross* “*examiner*” out here.

Should this be otherwise, we can only express for the Dr. our sincere regret and refer him to the *cross* “*examiner*” for further consolation. Every experience carries with it its own lesson, and we sincerely hope that Dr. Worthington may have derived from this trial such knowledge as shall be serviceable in the future successful management of his “primary department.”

But whether Dr. Brooks will derive equal profit, is not so clear. A trouble with him seems to be, that he does not remember what he learns. When he put the splint on Judge Howard, it could not have been such a horrible thing as when he gave his testimony in this case.

Yes, the Dr. has evidently “backslid,”—as to the yoke splint,—and

it is uncertain whether he will ever regain any respect for it. However this may be, we trust that the lesson of his example will not be wholly lost; and we would especially recommend his testimony to the careful study of all ABSENT MINDED practioners, and would urge that such be more upon the alert, lest professional pique or jealousy obscure their memory and place them in the equivocal position where the testimony of Judge Howard and Dr. Newell leaves Dr. Brooks. A 'black mistake' of this character does not help one professionally, socially or morally; and though perhaps there is nothing in this of particular application to our profession, yet the lesson to all is, if they would avoid the confusion which here has overtaken Dr. Brooks, they must learn to subdue their passions and improve themselves in memory.

I will only say further that I heartily join with Dr. Bullard in his acknowledgements to the court, jury, counsel and medical witnesses; and need offer no apology for the complimentary notice of Drs. S. Worthington and Brooks. Dr. Bullard would have given them his attention, but the relations between them are not very pleasant, (so says Dr. Brooks,) and it was feared that the favor might not be appreciated.

JOHN H. PECK.

St. Johnsbury, July 4th, 1871.

C. W. DREW,	}	CALEDONIA COUNTY COURT,
vs.		JUNE TERM, 1871.
G. B. BULLARD & J. H. PECK.	}	

JUNE 11, 1871, 11.40 A. M.

Writ dated 22d January, 1870; served 28th January; Case for Malpractice; Plea, general issue.

HON. H. H. WHEELER, *Chief Judge.*

HON. J. R. DARLING,	}	<i>Assistant Judges.</i>
HON. HENRY PERLEY,		

JURORS.

FRANK C. BACHELDER,	-	-	-	-	-	-	-	Danville;
L. B. CORLIS,	-	-	-	-	-	-	-	Newark;
JOSEPH H. CLARK,	-	-	-	-	-	-	-	Stannard;
ITHEMAR P. HILL,	-	-	-	-	-	-	-	Danville;
WM. J. HENDERSON,	-	-	-	-	-	-	-	Ryegate;
NARCISSUS MOREAU,	-	-	-	-	-	-	-	Waterford;
JOHN MORRISON,	-	-	-	-	-	-	-	Barnet;
SYLVANUS OWEN,	-	-	-	-	-	-	-	Waterford;
JOEL TRULL,	-	-	-	-	-	-	-	Burke;
MARTIN WILD,	-	-	-	-	-	-	-	Groton;
JAMES WHITE,	-	-	-	-	-	-	-	Ryegate;
JAMES PARKER,	-	-	-	-	-	-	-	Sutton.

TESTIMONY.

WESTLEY C. DREW.

The 10th Aug., 1869, I was taking down a woodshed and was at work in company with another man; a portion of shed fell and struck on floor and broke through and I was pitched backwards through the floor, and two stories of shed followed me, and broke collar bone. I was piled under timbers and could not extricate myself; neighbors got me out and

sent for Dr. Peck, one of Defts. He came immediately. He came in and made examination and stated that shoulder was drawn off. I asked him if he could set it. He said he could, and went to work and set it, so it felt smooth and nice. He then remarked he was a young man, and thought I was hurt inwardly, and he would like counsel. He said he desired Dr. Bullard, and he was sent for, and came in three hours or less. Bullard came in and Peck told him of accident and what he had done. It was then bandaged up and a great deal easier than when out. Dr. Bullard ordered me to be sit up in a chair ; by help of two or three and my strength I was set in a rocking chair. He took off bandages and ordered me to swing the arm. I swung it what I could. Dr. B. then said, raise the arm, and I raised it all I could. He then took hold of my wrist and raised the arm and moved it back and the bone flew out. I heard and felt it. Dr. Peck shook his head and said, I am devilish sorry you throwed that out, Dr. Dr. Bullard then ordered a sap-yoke to be brought. Some one inquired what kind of a sap yoke he wanted and he said a common one. Chas. Folsom came in and brought in two yokes that Dr. might select the one of his choice. He had the ends cut off so as to make yoke quite short. He then placed the yoke on my neck and fastened bandages from arm to end of yoke and drew on them. It was not as well as when Dr. Peck set it. He then left it and said he would be back the next day at ten o'clock. He held a conversation with Dr. Peck which I did not hear much of. Soon after the two doctors left, and Peck called several times during the day. I was in great pain and when bone was out seemed as if dirk knife was run into it. The yoke was very painful. Dr. Bullard did not come when he agreed to. During second part of that day I suffered terribly. On third day Dr. Bullard did not come. It was discovered there was black spot under the yoke, and skin was off in other places on neck, and Peck came in to see me and acted as if he had fears. He took off the yoke and laid it down. The bone was out as bad as at first. Dr. Peck then went at it with his bandages in same way as at first. Soon Dr. Bullard came in and asked how is shoulder. I said painful. He then said who took that yoke off. I said Dr. Peck. He made a remark in which he said the yoke ought not to be taken off ; I and my wife explained how it was. I did not hear him speak again. He went and *histed* himself into the wagon and drove hastily away, and from that day to this has never spoken to me except to nod to me yesterday when I met him.

(Recess until two P. M.)

2 P. M. — PLFF. RECALLED.—Since time I spoke of, my shoulder has been almost entirely useless. While hanging by my side I can use it quite freely and could lug a pail of water ; cannot raise it much. I am carpenter and joiner by trade. Some kinds of work I can do nearly as

well as ever. Most business I cannot do at all. My age is 37 years. My health was always good, and worked hard up to time I was hurt.

Cross examined by Wm. W. Grout.

I called Dr. Peck first, can't say as had any conversation with Peck about sending for counsel before arm was dressed. A brick struck me on head and I was stunned for a while. I think I was thrown back by floor, and struck house before I went down through hole in floor. My limbs were cut some by falling timbers. I was struck over left lung by timbers, which layed there until taken off. It pressed so hard that I could breathe with difficulty. Other rubbish was thrown on me. Can't say who moved timbers off. I was badly hurt but had my senses. My head bled some. Peck may have said he did not want to set and take charge of shoulder until he had counsel. I think Bullard was sent for before shoulder was dressed, and Peck dressed it while they were gone for him. Bullard arrived in about three hours. It was giving me some pain. I did not tell B. I would not have that damned thing on any longer. The dressing Dr. Peck put on was made of cotton cloth sewed together with packages under arm. I presume dressing cut into flesh and gave me some pain. I don't remember exactly how it was. The bandage was tight. Dr. Bullard came in and I was laying in bed. He ordered me set up in rocking chair; could not get at me and ordered me removed into a kitchen chair. B. took bandages off. Dr. Peck made no statements, as I have said, before bone flew out. Bullard said to Peck when bone flew out, Dr., you was right. I said no word with Dr. B. what was matter with me. I cannot state whether this is the yoke; I think that one was longer; some three inches longer on each end; my impression is this is not the yoke. I think that yoke was not painted. It seems as though it was heavier and rougher than this. It may be the same yoke and in the same state I wore it. Bandages were applied under and around the arms and over the end of yoke, I cannot tell exactly how. He stated he would submit the matter to Dr. Peck until he should call again, and he would next day at nine o'clock. I did not tell him not to call again until I sent for or him. I never told him if I wanted him again I would send for him. I supposed Dr. Bullard was the man. The dressing Dr. B. put on did not leave me as comfortable as Peck left me. The yoke was an additional burden. I had confidence in Dr. Peck all the while. I submitted to men who claimed to know and did as doctors told me. I had confidence in Peck. He was an acquaintance of mine and desired counsel, and chose Bullard. I allowed him to select whom he chose. After Bullard left I expected his return. I supposed Peck would attend to me, and that Bullard would come and they would counsel together. Dr. Bullard gave orders to tighten occasionally on these bandages until he should come again next day. I did not understand that critical part of operation was over when bone was reduced. I cannot tell what they

told me about probability of recovery. I don't know as they told me what position to lie in in bed. I think they told me to lie in as comfortable a position as possible. They were there first, 10th Aug. The 3rd day Dr. B. was there again. The yoke was removed before B. got there. Peck removed it. I did not loosen bandages about the yoke. I never did nor did any one by my request. No person loosened or tightened bandages except Peck, after they were put on by Bullard. I cannot tell how bandages were on end of yoke when Peck took it off. Peck was not there when Bullard was there second time. Peck took yoke off same forenoon that Bullard was there. I was glad when yoke was off, as I was losing faith in yoke. Should judge Peck took off yoke in first part of forenoon, and that Dr. B. drove up between 9 and 12. I think myself and wife and two little children were there. My wife took care in daytime, and nights I had watchers. There is a piazza to my house. I don't remember his driving up that day and finding me sitting on piazza.

How Dr. Peck went out.

Before the close of Plaintiff's testimony his counsel asked leave to enter a nonsuit as to Dr. Peck. The Defendants had been declared against jointly, but not as partners.

The Court said that both the Defendants could not be tried together ; and in entering a nonsuit as to one it might be questionable whether it would not be a nonsuit as to both ; that at least it would be a course for continuance if Dr. Bullard should desire it. But Dr. Bullard's counsel told the Court that he did not want the case continued ; nor did he raise any question about the nonsuit as to Dr. Peck, and did not want a nonsuit entered as to himself ; that he wanted the trial to proceed for the sake of the complete vindications which he believed it would bring him. Whereupon a nonsuit was entered as to Dr. Peck and the trial proceeded, and the Plaintiff at once called Dr. Peck as a witness.

JOHN H. PECK.

In Aug. 1869, lived at West Concord ; was called to see Plaintiff at that time ; examined him ; found a dislocation of sternal extremity of clavicle : told Mr. D. I was a young man and never saw this dislocation before, and did not want to be responsible for it, and wanted counsel ; told him he might have who he chose, but I preferred Dr. B. He said he would avoid the expense. We sent for him. I told him I would reduce it, and put on a dressing until he came. I dressed it and put on the figure of 8 bandage. I then put a pad under the arm ; then put the arm in a sling with roller around body. It remained so until Dr. B. came. He came in three hours. I told him he must do something to relieve Drew, as he was taking on with my bandages. He removed bandages ; bone still in its place. He asked Drew to move his arm and he moved back and forward. He then asked Drew to raise his arm and he took hold and raised it, and bone came out. I said I was devilish sorry. He said I was

right. We talked it over and made up our minds to use the yoke with the bandages. I think we reduced the dislocation when we put on the bandages. I reduced it the second time, and Bullard put on the bandages. Dr. B. helped reduce it. The figure of eight bandage was put on same as first time, but not so tight. The yoke was padded and put on and another figure eight put over. Small pads of cloth were put over pads of dislocation and put arm in sling. After all of yoke and bandages were on bone was in its place. When we got through Dr. B told him to keep quiet and lay on his back. As we went out of door I asked Drew if he wanted Dr. B. to come again. At first he thought he would. Finally it was agreed that if he wanted him again he would send for him, I never saw or knew of Dr. B. being there again. I saw him in three or four hours after Bullard left. The bone was then out. I reduced it again with machinery all on. That evening 8 or 9 o'clock I went in again, and bone was not out. Next morning bone was out and I reduced it again. That afternoon it was out and I reduced it again. I found bandages loose. Morning of third day bone was out and bandages which I had tied in bow knots worked into hard knots. The bandages were loose and off one end of yoke. Mr. Drew or his wife said that bandages had got loose, and they had attempted to tighten them. The yoke had bothered him from start by galling neck, and when I removed yoke was was a chafe nearly as large as a half dollar. He had the yoke tightened up all the morning. I was going to fasten on the yoke again, and he said he could not and would not have in on again. Bone was out. I did not reduce it again, as he said he would not have it touched again, as it was no use. I put on bandages to give him as good an arm as I could. I told him then he would not get a good arm.

Cross Examined by Deft's Counsel, Wm. W. Grout.

We told him at first that his chance was rather slim. Dr. B. told him the cavity of bone was so shallow that had to depend upon the bandages. I never saw such a dislocation, and I have found no case where there was a reduction and retained. This is same yoke and in same condition as when put on, and same length. (Explains use of it by putting it on his own neck). The yoke splint is approved dressing for this kind of dislocation. As we went to the door Drew said he was mighty glad we had come as we did, as if we had'n't he would have taken shears and cut them off. I considered the dressing I put on temporary. I always succeeded in reducing the bone except the last time. Every time I went I found the bandages loose—looser than I left them. The dislocation of that bone would have tendency to loosen them. Mr. Drew was up every day: he said he could not lie in bed with yoke on.

RETURNED.—I am quite confident Mr. Drew said he should use the shears. At time I removed the yoke I did not think we could keep it in

with the yoke. He kept moving about, getting up and lying down. If he had laid still I think we could.

Returned and cross examined.

I did not think I could keep it in with any kind of dressing with his manner of keeping up around.

DR. EDWARD WORTHINGTON.

I live in Sherbrooke, P. Q. I am physician and surgeon, been in practice 28 years; I studied 6 years in Quebec; then went to England two years at school, and was asst. surgeon in British army: I am one of the examining board for granting licenses in the Province of Quebec; I have examined this plf. There has been dislocation of sternal end of collar bone; the end of bone is laying on sternum: I have had 2 cases, and saw a case when I was student, and saw another of dislocation. In my cases I had no difficulty in retaining bone in its place by mechanical contrivances. In two cases I used the figure of 8 bandages with sheet lead and gutta-percha padded to keep clavicle in place. I think Dr Peck's treatment was most judicious, and I think it most unfortunate that bandage was removed. It is very difficult to keep bandages in proper place and needs constant watching. If it remained for certain time I see no trouble in his recovery with sound arm. I think it well to let well enough alone. I rejoice to say I never had any experience with so barbarous an application as the yoke splint. I never saw a yoke until I saw it here to day, and I am sorry I have seen it. I saw a reference to it in a work by Dr. Hamilton. I think such a yoke as Dr. H. recommends might be useful, but not such an arrangement as this yoke.

Cross examination by Wm. W. Grout.

Q.—Then you are acquainted with Prof. Hamilton's work on dislocations and fractures?

A.—Oh yes.

Q.—How do you like it?

A.—I don't think much of it. It does not compare with English works and is not the best of American works.

Q.—You are well acquainted then, are you, with other American authors on this subject?

A.—Oh yes.

Q.—Give the names of such.

A.—I cannot give a complete list.

Q.—I do not ask for a complete list. Give the name of one other American treatise on dislocations and fractures.

Witness hesitates, and counsel repeats:—Give the name of one other American writer on this subject.

A.—None occur to me now.

Q.—The truth is, then, you do not know anything about American authors on this subject—not enough to know their names even!

A.—I have examined Hamilton somewhat.

Q.—Did you ever see it until you reached this town to attend this trial?

A.—Can't say that I but never did.

Q.—I would now call your attention to the anatomy involved in this dislocation. It is true is it not, that the sternal end of clavicle has no socket like most other joints, but rests upon a flat surface, and is held in place by certain ligaments, cortilages and membranes; and that when dislocated as in this case, these are all torn away.

A.—Yes, though I think the sternal portion of the interclavicular ligament was not broken in this case.

Q.—To effect a cure it is important to keep the shoulder up and back, is it not?

A.—Yes, sir.

Q.—And to accomplish this you have not only the weight of the shoulder, but the involuntary contraction of several large muscles to overcome, have you not?

A.—Yes.

Q.—Can you conceive of any other appliance that will as effectually accomplish this as the yoke splint and figure of eight bandage combined?

A.—Well, sir, the figure of eight bandage is a good dressing. It has the approval of the profession, and such writers as Sir Astly Cooper and others in the Old Country.

Q.—But the yoke splint you consider a peice of barbarism, do you not?

A.—I do not consider it a suitable dressing at all.

Q.—You are not aware that it has been used by the profession in New England for the last fifty years, and that too, with general favor?

A.—Perhaps such as this — referring to a patent yoke splint put into the case by deft. — may have been used, but not some agricultural implement, like a sap-yoke.

Q.—Will you take these two splints, the patent splint and the sap-yoke, and examine them carefully; and if the patent is in any respect the best, say in what respect, and why the best.

A.—I can't say there is much difference, except that the sap-yoke is a great deal the heaviest.

Q.—How much the heaviest?

A.—I cannot say, but considerable.

Q.—How much, I want your best judgement?

A.—Witness, after carefully handling them sometime, said: Perhaps two or three ounces.

Q.—Not so very much heavier, then, after all?

A.—Not so very much.

Q.—Now I want you to tell the jury about these muscles which have

their attachment to the shoulder, and about their contraction. It is true, is it not, that whenever a bone is fractured or thrown out of place, the muscles in the neighborhood of the injury, take on what is called involuntary contraction?

A.—It is; and sometimes that contraction is very powerful.

Q.—In this case, the muscles about the shoulder contract, and tend to draw the shoulder down, do they not?

A.—Yes, sir.

Q.—And to effect a cure, you say it is important to keep the shoulder up—now, let me ask you as a matter of philosophy, if it does not seem to you that the yoke splint is admirably adapted to accomplish this result.

A.—Perhaps so; I can't say.

Q.—Give the names of these muscles which contract to draw the shoulder down. Give them all.

A.—There is the deltoid, the pectoralis major and the pectoralis minor.

Q.—Give the origin and insertion of each

A.—The witness gave the origin and insertion of the deltoid and pectoralis minor, correctly—or at least to the satisfaction of counsel; but of the pectoralis major, witness said in substance, as follows: It has its origin from the clavicle, and its insertion along the middle portion of the ribs.

Q.—Are you sure, Doctor, that this muscle has its insertion along the ribs, at that point.

A.—Yes, sir.

Q.—Has it not its insertion upon the anterior lip of the bicipital groove?

A.—I think it has. I was mistaken; it has.

Q.—And did you give the whole extent of the origin of this muscle?

A.—Yes, sir.

Q.—Does not this muscle also extend along the whole length of the sternum or breast bone?

A.—Yes, sir. Oh yes, it does.

Q.—And is that its whole extent?

A.—Yes, sir, to be sure.

Q.—Does it not also extend along the cartilages of the true ribs?

A.—Indeed, I think it does.

Q.—This muscle has an extensive origin, has it not; more so than you were thinking?

A.—It has an extensive origin.

Q.—Have you given the names of all the muscles that have to do in drawing the shoulder down and pulling the bone out of place?

A.—I think I have unless it is the *Satissimus dorsi*.

Q.—Has the biceps muscle anything to do with it?

A.—It would have.

Q.—Now give the origin and insertion of the *Satissimus dorsi*. It is an important muscle, is it not?

A.—It is. Witness held in his hand a skeleton, and after starting once or twice to give the origin of this muscle, said: I don't know as I can give it in technical language.

Q.—Very well, sir, use your own language; but point out to the jury whereabouts on the shoulder this muscle has its origin, and give its direction; then point out the place where it terminates. Take your time for it, sir?

A.—Witness turned the skeleton half round several times, and commenced as often to answer the question, but finally said; I don't think I can tell; it has been some time since I was examined.

Q.—But you say you are one of a board of *examiners* when at home—does it require less knowledge to examine, than to be examined?

A.—In our examinations each has his own department.

Q.—Which is your department?

A.—The primary.

Q.—You say the primary?

A.—Yes.

Counsel.—Well, I should think so; that is all.

DR. SAMUEL T. BROOKS.

I am physician and surgeon; been in practice 20 years; I have seen plf. twice; first time one year ago last Jan., and again a few days ago. The mode of Dr. Peck's treatment is one and the most frequent mode of treatment in reduction of clavicle. Writers generally say treatment for dislocation of clavicle is same as fracture. I have never seen but one case before of dislocation of sternal end of clavicle; that was treated successfully by means of figure of 8 bandage. I have never seen yoke used in any case. Recovery depends upon many circumstances; upon willingness of patient to submit to confinement; bandages should be carefully watched and frequently tightened. The reduction must have been very complete to be so perfect, that surgeon would have to raise arm to discover it. Raising arm was a very natural way to throw bone out of position and would be very unwise.

CROSS EXAMINED.—I should want to know what difficulty was. I would inform myself by description of symptoms, by attending physician. I suppose there would be no other way to satisfy myself except by examination. Think yoke splint is not recommended by Dr. Hamilton. There are several muscles which have tendency to draw this joint out of place; I should judge that yoke splint would not keep shoulder in place by reason of motion of well shoulder; it is important that patient keeps quiet; it is very irksome indeed to patient. There has been difficulty between Dr. Bullard and myself; I do not like him.

See Theron Howards testimony page 22 & Dr. Howards page 23

DR. RALPH BUGBEE.

They call me a physician and surgeon ; been in practice fifty years ; we generally put them together easiest way we can ; I have the name of reducing a great many dislocations of clavicle ; difficulty is to keep them ; you may get them in and go away and they get them out and lay it to the Dr. ; we use splints late years ; you cannot fasten a broken bone so but what a person can get it out of way ; I don't know as I ever failed to perfect a cure.

WILLIAM FRANKLIN.

I had care of Drew one night while his shoulder was injured ; I think the 2nd night after he got his shoulder hurt ; I did not move nor did I see any bandages moved ; I asked him once if I should loosen bandages, and he said no ; that no person should move them but Dr. ; all he wanted was sound shoulder ; I don't see why his health and strength was not good before this ; worked hard all the time ; could do as much work as any other man at his business.

DR. HIRAM S. BROWN.

I live in St. Johnsbury ; have been in practice sixteen years ; have examined plf's. shoulder one year ago last winter ; I also saw it this morning ; it is no better than then in some respects. Figure of 8 bandage with pad in axillary is approved by authors in reduction of dislocation of sternal end of clavicle. Tendency of raising the arm would be to displace the dislocation. No more difficulty in making second reduction than first. Absolute quiet would be necessary—not absolute repose, as man lying with broken thigh ; should be governed by circumstances. There is authority for use of this yoke. Hamilton speaks of it. He refers to it as a splint of Hunton improved by Day. Quiet is required from fear of displacement.

Cross Examination by defendant's counsel, Wm. W. Grout.

Prof. Hamilton does not speak disapprovingly of this splint. I believe Prof. Hamilton would be good authority ; difference of four, five or six ounces in weight between these two splints. Surgeons use best implements at hand. This splint was never a favourite of mine. I don't think I should apply the splint as a permanent dressing, as it has a tendency to produce excoriations. I should satisfy myself that there was no difficulty, and if none, should let it remain. My relations with Dr. Bullard are not friendly.

Recess until 9 A. M., June 22nd.

DR. PECK RECALLED.

I should not have changed that dressing if Dr. Bullard had not come. I think Bullard asked me about his coming second time and I told him I did not know.

Dr. has told me was not there second time, but number of weeks afterwards he said he was along road and saw plf. on piazza.

Cross examined by defendant's counsel, Wm. W. Grout.

I put on bandages as temporary dressing ; I said I was devilish sorry because had to give him chloroform. I told Bullard I had put on temporary dressing and I wished him to make thorough examination to see if anything else ailed him.

Plf. rests.

DR. G. B. BULLARD.

Tenth of August, 1869, I was called to see Mr. Drew, got there about eleven o'clock in the morning. The information I received was that he was a patient of Dr. Peck. I had no knowledge of what his injuries were. Met Dr. Peck in village and he rode up to Mr. Drew's ; went in together, and he gave me a history of case ; he thought there was dislocation of sternal end of clavicle and wished me to make thorough examination for injuries of collar bone and other injuries. As we went in Drew said he was d——d glad I had come as he would not wear that dressing five minutes. They were tight, and when taken off, there was discoloration under arm. I removed dressing and raised arm substantially as Dr. Peck has stated. Bone flew out. I then made examination. It was described to me that he was thrown under this timber and rubbish and stick of timber lay across his breast. In 1865 he had a fall and threw shoulder out, and in setting that shoulder I saw bunch over sternal end of collar bone, and I made examination more thorough, to see if larger than formerly. We first consulted as to laying him on back and putting on no dressing. Drew was refractory, and we thought it would be best to dress it. I told Peck I had best success with yoke, in fracture of clavicle. Mr. Folson produced yoke &c. sawed off sap yoke ; and I think a second time. It was presented then as now. I stuffed or padded the splint. Some lady brought a bed quilt ; flannel was brought. I can't tell which was used. Drew said he would not have it touched with out chloroform, and Dr. Peck gave the chloroform. When he was fairly asleep we adjusted the bone. There were half dozen times bone came out, and I proceeded to adjust splint in way I will show you. First put on figure of 8 bandage, used axillary pads.

Explains Method.

I have always liked the yoke splint, and have always used it for fractures. All dressings for fractures and dislocations of clavicle are irksome. Five muscles act to pull this dislocated clavicle out of place : also the clavicular sterno mastoid muscle, which draws end up was severed. I never heard that any man ever cured a dislocation of sternal end of clavicle perfectly. Best authors say it is better to make no effort to cure this dislocation. After I got done, Dr. Peck and I consulted about my coming

next day and Peck went in and saw Drew and brought back word that I need not come again unless I was sent for. On 16th of Sept. I was coming from Concord Corner. I saw Drew on veranda and I drove up, and can't say whether I got out of wagon, but think not. I asked him how his shoulder was. He said no better. Asked him if it came in place. He said no. I asked him if he was wearing dressing. He said no. He wore them 3 or 4 days; that he did not know whether he took them off or Peck; that they hurt him so he could not wear them any longer. He railed about Peck and said he wanted to send for me again but he would not let him. I offered to examine his shoulder, but he would not let me. He said he overheard Peck and I talking that sometimes they put on no dressing but let them go; and he thought he would let his go. He made no claim for damages.

Cross-examined by O. T. Brown and Thos. Bartlett.

FIRST ONE, THEN THE OTHER.

Have been in practice 16 years; never saw dislocation of clavicle before; have had several cases of fracture; action of muscles same in fracture as in dislocation; dislocation is more difficult than fracture. I found him on bed in sitting posture. He had pants and shirt on. My attention to bruise on head, first. His shirt was off, and I could see bandages. There was so much material over chest I could not tell whether bone was out or not. There was a deformity over sternal end of collar bone.

Ligaments are all torn off in a dislocation. There may be a partial dislocation. Drew did not tell me there was a dislocation and Peck had reduced it. Dr. Hunton of Maine, was inventor of this yoke. Prof. Hamilton is Professor of Fractures and Dislocations in Bellevue Hospital, in New York. He commenced writing some 20 years ago. I was not in Concord from 10th of Aug. to 16th of Sept. In this dislocation the quicker reduction is made the better. It was so soon that no inflammatory action had set in. Six weeks or more would be necessary to make this dislocation sound. Dr. Peck told me he had not had much experience as a surgeon. I considered my duty at an end when I left them on the 10th.

RE-DIRECT.—On 16th of Sept. I was accidentally there and made no charge. There was one perfect recovery in case of child. Chances for cure of child much better than adult.

RE-CROSS-EXAMINED—This splint belongs to Dr. Newell. I never owned one.

DR. EDWARD E. PHELPS.

I am 58 years old; have been in practice since 1824. I am one of the Professors in Dartmouth College, and have seen Hospital practice in Europe. My practice is mixed—surgery and medicine. I reside at Windsor. Duty of Consulting Surgeon is to examine case and make diagnosis himself. Dr. Peck being a young and inexperienced practitioner

I should have made independent examination. I should have removed the bandages. I see nothing irregular in conduct of Dr. Bullard on that occasion. When I began practice the yoke splint was used in New England. I think it was first used by Nathan Smith. I think the splint the best dressing. The figure of 8 bandage is an admirable one. There are only two dressings worth mentioning—the figure of 8 bandage and yoke splint. Don't think Bullard's dressing could have been improved.—Prof. Hamilton is a leading author and is quoted by most writers of present day, as an authority. Rupture of ligaments usual.

Cross-Examined by Plf.'s Counsel, Thos. Bartlett.

I have seen or treated some 3 or 4 cases of fracture of clavicle per year for the last 20 yrs. I have not treated more than 3 or 4 cases of dislocation. I only remember 2. In those there was incomplete reduction and deformity; got useful arm. I used yoke in one, and in other patient was confined to bed. Practical surgery is both a science and art.

RE-DIRECTS.—In fracture I generally use yoke; it serves same purpose in dislocation as in fracture. Some authors contend that putting patient in bed without dressing is best practice. There was more motion in sternal end of clavical after dislocation than before. The muscles are softer and arm smaller on left side. This may be caused by non use.—Right arm generally largest and muscles firmest.

DR. NEWELL.

I heard Dr Peck's testimony. I should determine nature of injury for myself. Bandage would have been taken off to make examination. Yoke splint is best dressing for fractures and dislocations. I own this splint; have owned it 8 or 10 years. Nothing wrong in patent splint.

Cross-Examined.

I have never had a case of dislocation of clavicle. I have used this splint twice. I don't suppose dislocation is ever cured.

Re-directs.

DR. EUSTACE V. WATKINS.

I have been in practice since 1851, and reside in Newbury. I heard Peck's testimony. I think what Dr. Bullard done was justifiable; that removal of bandage was necessary. I am acquainted with yoke splint. I have had some fractures and one dislocation of sternal end of clavicle. The literature of the profession is that perfect recovery is not expected. I don't know of any application which will do better than yoke splint.—I think Bullard's dressing could not be improved. I don't see anything wrong about yoke that was used by Dr. Bullard.

Cross-Examined by O. T. Brown.

My case was a man of 48 or 50; complete luxation as near as I can recollect. I treated this case two and one-half months. I gave him

instructions to keep as still as he could. He got a recovery with deformity. He could not raise a weight above his head. There is difference of muscular development of two arms. In principle I used the figure of 8 bandage; put axillary pad under arm; found difficulty in keeping shoulders in proper elevation; watched the case very closely. He did not walk about and go out doors for several weeks. I used a sling and roller to keep arm in place; kept him in house ten weeks; kept him as still as I could four or five weeks.

RE-DIRECT.—Sternal end of clavicle was loose after recovery.

DR. C. M. TUTTLE.

I have practiced 30 years. I reside in Littleton, N. H. I heard Peck's testimony. Nothing wrong in what Bullard did. Removal of bandage necessary; think consulting surgeon should ascertain for himself. Have seen yoke splint used for fractures. Know no other dressing so good as this; could suggest nothing in addition; think yoke is addition to figure of 8. Difficulty of recovery is liability to recurrence of dislocation by respiration and other motion. Absolute quiet is necessary. It is a debatable point whether should resort to extreme dressings. Nothing about splint used to show it improper dressing. If I had no other I should put it on; but should not send for it. Dr. Hamilton is a popular surgeon and a writer of authority. My practice is large. I always extemporize my splint in all cases.

Cross-Examined by Brown.

I have been in practice since 1840; my first case was a male. Complete luxation and ligaments all inflamed; no difficulty in reduction; have had two cases of this kind. The cure was imperfect in both cases. There was a looseness and enlargement. One of the individuals was not a laboring man. The other was a sailor and went to sea for a few weeks. The seaman was under my care for four weeks, then he was gone two or three weeks under care of Dr. Fisher; returned, and after few weeks went to sea. I did not use yoke on either patient.

DR. JAMES S. DURANT.

I reside in Danville. I heard Dr. Peck's testimony. Dr. Bullard's conduct was correct; think removal of bandage was necessary; have used yoke splint on eleven cases: know of no other appliance so effectual. Dr. Bullard's dressing was proper, and I could not improve it. Think it is impossible to get a perfect recovery of ruptured ligament. Yoke used was proper; it meets all indications. I have three different sizes of splint. For grown person I should extemporize that splint

Cross examined.

DR. JONATHAN F. SKINNER.

I reside in Barton; have been in practice forty-five to forty-six years. In consultation my practice is, as I am held responsible for my opinion,

to feel with my own fingers, hear with my own ears, and judge with my own judgment, before giving an opinion. Dr. B's course was the common one. A proper examination could not be obtained without removal of bandage. When I am called in consultation I con-
 ended if patient indicates that he is through with me or will send for me. Yoke splint is better than bandage alone, in a long treatment; surgeons now frequently combine the two. No improvement on Bullard's appliances. The surgeon must give care, utmost care, to see that dressings remain in proper manner. No difference in complete splints in practical usefulness. Testimony is, that deformity is rule, and recovery the exception.

No cross examination.

DR. EDWARD. A. PAGET.

I reside in Stanstead; have been in active practice since April, 1855. Duty of consulting surgeon is to examine for himself. I should remove bandages. Dislocation of clavicle is much easier to reduce than kept reduced. Dislocation of sternal end of clavicle is such that cure gives general dissatisfaction. I think the yoke splint an admirable improvement. I should use figure of eight bandage and yoke splint.

Cross-examined.

I have had only one case of this kind. I commenced my career in Wront's Hospital, in 1857.

DR. DAVID M. MERRILL.

I reside in St. Johnsbury; been in practice since March, 1870. I have seen yoke splint used in one case of dislocation of sternal end of clavicle in Massachusetts General Hospital, of Boston, under direction of Henry J. Bigelow. No improvement on Bullard's dressing. Figure of eight bandage with yoke splint, perfect. Gron recommends yoke splint. Dr. Hamilton recommends it.

Cross examined by O. T. Brown

Treatment of fractures and dislocations are same; been in practice three years next month.

RE-DIRECT.—This was on visit of class of 150 students to the hospital.

DR. LEMUEL RICHMOND..

I reside at Derby Line; commenced practice in 1825. I have frequent calls in consultation.

In any important case, I should consider it necessary to know the case. All of dressing should be removed, so I could see the chest. I never used yoke splint for dislocation. I have used it for fracture. It seems to me there is nothing that will keep the shoulder up as well. That splint with figure of eight bandage I consider the most efficient

dressing for this class of injuries. No difference in utility between these splints.

I had rather have a fracture than a dislocation.

Cross-examined

I have only seen one of these cases

RE-DIRECT.—If requested to look at the injuries, should examine. I don't see any other way except by manipulation of arm. If clavicle should come out again I should reduce it.

DR. RUSSELL T. JOHNSON.

From Medical Schools of New York in spring of 1867. The figure of eight bandage and yoke splint is recommended as proper dressing, by Prof. Hamilton and Prof. Parker.

Recess at two P. M.

SOLOMON GEE.

I reside in West Concord; am acquainted with Mr. Drew. Helped Dr. Peck put on first dressing. Dr. Peck said: don't know as it is right but we will fix it as well as we can till Dr. B. comes. Mr. Drew complained of it; was his old lame shoulder. The next morning but one, I went in to see him; he sat up in his chair and I saw that the bandages were loosened, and I asked him why he had taken them off, and he said: "O God! I could not live so." I said the devil is in you.

Cross-examined by O. T. Brown.

He had a blanket over his shoulders. I know the yoke was off; never saw the yoke until I saw it here; was frequently there afterwards and felt of shoulder; never saw any bandages on after Peck put them on.

In front of apothacary shop, Dr B. inquired of me what I knew about Mr. Drew's being hurt. I told him I did not know of his being hurt; I think I told him I saw Drew with bandages off.

THERON HOWARD.

I have had fracture of collar bone. Dr. Brooks treated me, he put yoke splint on my neck, and he said I ought to keep it on three weeks.

No cross examination. Defence rests.

PLF. RECALLED.—Had no interview with Dr. Bullard on 16th of September. Wore the bandages forty-four days—from time I was hurt till taken off by Dr. Peck's order. Think Mr. Gee was in third morning, soon after Dr. Peck took off yoke. Bandages were on then. Peck said he wondered Bullard did not come; that he could do nothing with yoke, and was going to take it off. Mr. Magoon had more care of me than all of the men that took care of me. Mr. Magoon is in Canada, just over the line in North Derby.

Cross-examined by W. W. Grout.

• Dr. Peck took bandages and took yoke off, and did it much as at first.

DR. BULLARD recalled.

Dr. Peck gave me this yoke year after I treated Mr. Drew. It has been kept at my house ever since.

DR. PECK recalled.

I did take off yoke but did not remove bandages, then or at any other time. The day I removed yoke, I carried it to my house. I gave it to Bullard at my house a short time before December Term, 1870.

THERON HOWARD recalled.

I received this injury seven years ago. Think I wore it some two weeks. Dr. Newell took it off. Think he did not say much, either way.

DR. BROOKS recalled.

Judge Howard had fracture of clavicle near shoulder: The yoke was used in his case. Think Dr. Newell saw patient first. Think yoke was used with my approval.

Cross-examined by W. W. Grout.

Am acquainted with Dr. Worthington; don't know by whose request he is attending court.

DR. NEWELL recalled.

I was former partner of Dr. Brooks. Think Dr. B. was first called and put on splint. I took off splint because cure was effected.

Testimonies closed.

CHARGE.

BY JUDGE WHEELER.

When the defendant held himself out to the public as a physician and surgeon, he held out that he had reasonable skill in the profession to which physicians and surgeons belong, and that he would treat cases proper for his services when employed for that purpose, and would use his skill with reasonable diligence.

Reasonable skill is such as physicians and surgeons in the vicinity usually have; such skill as is common among physicians and surgeons of his opportunities.

Reasonable diligence in the use of his skill, is such as a prudent physician and surgeon would commonly use in matters of like importance, under like circumstances.

When the plaintiff called the defendant to his case, and the defendant went and undertook to treat him, he undertook that he had this measure of reasonable skill, and that he would use this measure of reasonable diligence in applying it in the treatment of the plaintiff's case.

The undertaking was not that he would effect a cure, nor that he would produce a good result, but that he had reasonable skill and would make a prudent use of it for the purpose of producing as good a result as he could.

The plaintiff, when he called Dr. Bullard to his case, gave him license to make all proper examinations, and undertook to follow all reasonable requirements.

It was the duty of the defendant to act in view of the case he had presented to him by the symptoms of the plaintiff, as he could see and ascertain them, and in view of the statements made to him by the plaintiff and Dr. Peck.

The dislocation had been reduced and the parts dressed. The defendant undressed the parts and proceeded to make further examination, and in making the examination dislocated the bone again.

The plaintiff claims that the defendant did not use reasonable skill with reasonable diligence when he did this. If he did not, either because he did not have it, or having it did not exercise it, he is liable for the consequences of the failure to use it.

When the bone was displaced it was the duty of the defendant to use the same measure of skill and diligence in replacing and dressing it.

He was not bound to make use of any *particular kind of dressing*, but was bound to use the skill and diligence in selecting what kind he would use from among the dressings commonly known among surgeons of his vicinity, and of the class he held himself, to be of.

He was not bound to use the best kind of dressing, but was bound to use reasonable diligence and skill in *trying* to select and use the best kind of dressing.

In determining what kind he would use he was bound to keep in view the commonly received truths and rules of his profession and to have a due regard for well known methods of practice in such cases, and to make use of works commonly received as medical authorities among surgeons of his class.

He had no right to make experiments upon the plaintiff any otherwise than in making reasonable applications of his skill to the plaintiff's case.

The plaintiff claims that the deft. did not use reasonable skill in redressing the parts after reducing the dislocation. If he did not he is liable for consequences.

Opinions of men learned in the medical profession are competent evidence to be weighed by the jury upon subjects peculiarly within their knowledge.

Their opinion upon the facts are not evidence, but their opinions upon medical subjects are evidence to enable the jury to determine facts; their opinions are evidence but not conclusions.

